



APR 16 2013

Reply to the attention of:

DEP/GIAE/RI/23603

Mr. John P. Gause
Commission Council
Maine Human Rights Commission
#51 State House Station
Augusta, Maine 04333-0051

Dear Mr. Gause:

Thank you for your March 8, 2013 request to the Occupational Safety and Health Administration's (OSHA's) Directorate of Enforcement Programs (DEP). You asked about OSHA's sanitation requirements under 29 CFR 1910.141(c)(1)(i). This letter constitutes OSHA's interpretation only of the requirements discussed and may not be applicable to any question not delineated within your correspondence. Your paraphrased background information and question and our response follow.

Background: Under 29 CFR 1910.141(c)(1)(i), OSHA requires employers to provide their employees with toilet facilities "in toilet rooms separate for each sex . . ."

Question 1: Does this requirement prohibit an employer from allowing transgender employees (meaning whose gender identities are different from their "biological sex" or sex assigned at birth) to use bathrooms consistent with their gender identities?

Reply: No. Although the requirement under 29 CFR 1910.141(c)(1)(i) does not address whether employees can use toilet rooms consistent with their gender identities, it would not prohibit an employer from allowing transgender employees to use bathrooms consistent with their gender identities.

On April 6, 1998 OSHA issued a memorandum, which explained that 29 CFR 1910.141(c)(1)(i) "*is intended to ensure that employers provide employees with sanitary and available toilet facilities, so that employees will not suffer the adverse health effects that can result if toilets are not available when employees need them.*"

http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=22932.

It should be noted that OSHA's Sanitation standard in general industry (§1910.141) was adopted in 1971 pursuant to section 6(a) of the Occupational Safety and Health Act of 1970 and has not been revised substantially since. This standard was based on the American National Standards Institute (ANSI) Z4.1 – 1968, titled Requirements for Sanitation in Places of Employment. The requirement under §1910.141(c)(1)(i) came, in part, from that 1968 ANSI sanitation standard, which had a general requirement under Section 6.1.1 that "[e]very place of employment shall be provided with adequate toilet facilities which are separate for each sex." The 1968 ANSI standard defined "toilet facilities" to mean "[f]ixtures maintained within toilet rooms for the

purpose of defecation.” (OSHA’s standard defines “toilet facility” as “a fixture maintained within a toilet room for the purpose of defecation or urination, or both.”) The additional language regarding *urination* in OSHA’s standard is consistent with the revised definition of “toilet facility” in the 1986 edition of ANSI Z4.1.

Little change has been made to Section 6.1.1 of the ANSI standard since 1968. The requirement at Section 6.1.1 in the 2005 version of that standard reads:

Every place of employment shall be provided with adequate toilet facilities. Where ten persons or less are employed, a single toilet may be provided for both sexes if provision for complete privacy is made. Where more than ten persons are employed, separate facilities shall be provided for each sex and properly labeled unless all employees are of the same sex. [ANSI Z4.1– 2005 defines “toilet facility” as “[a] fixture maintained within a toilet room for the purpose of defecation or urination, or both.”]

Moreover, although OSHA standards do not address gender identity, they do allow for privacy regardless of an employee’s gender identity. Please note that OSHA’s general industry sanitation standard also offers an additional consideration that allows for employee privacy during toilet breaks, regardless of sex assigned at birth, or subsequent gender identity—that is, under §1910.141(c)(1)(i), “[w]here toilet rooms will be occupied by no more than one person at a time, can be locked from the inside, . . . separate toilet rooms for each sex need not be provided.”¹

As you may be aware, 27 states administer their own OSHA-approved occupational safety and health programs, or State Plans. All State Plans are required to cover public sector (state and local government) employees (29 U.S.C. 667(c)(6)), and 22 State Plans also cover the private sector. These State Plans must adopt and enforce standards that are at least as effective as those standards promulgated by Federal OSHA (29 U.S.C. 667(c)(2)).

OSHA also understands that several States have successfully adopted gender identity protections that are not adversely affected by requirements under §1910.141(c)(1)(i). For example, the Iowa Civil Rights Act was expanded to include “gender identity.” The following guidance was provided to employers by the Iowa Civil Rights Commission with regards to gender-segregated restrooms: The new law requires that employers permit employees to access restrooms in accordance with their gender identity, rather than their assigned sex at birth.

This issue is not unique or limited to the workplace. The Human Rights Campaign (HRC) also recognizes that “[n]o single solution will work for every worksite” and acknowledges that “[e]mployers’ options for reasonable restroom access [for transgender workers] may be limited by the physical set-up of their office, industrial or retail facilities” <http://www.hrc.org/resources/entry/restroom-access-for-transgender-employees>. You should be also aware that some employers and labor organizations may have specific requirements that are more prescriptive than OSHA’s minimum requirements.

¹ Paragraph (b) of §1910.141 defines “toilet room” as “a room maintained within or on the premises of any place of employment, containing toilet facilities for use by employees.” And, “toilet facility” is defined as “a room maintained within or on the premises of any place of employment, containing toilet facilities for use by employees.”

Regarding the workplace harassment or intimidation of workers, employers are required to protect employees from any act or threat of physical violence, harassment, intimidation, or other threatening disruptive behavior that occurs at the work site. OSHA's Enforcement Procedures for Investigating or Inspecting Workplace Violence Incidents may be found at: http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=DIRECTIVES&p_id=5055 Additional information on workplace violence can be found on OSHA's website, on the Safety and Health Topics page, at <http://www.osha.gov/SLTC/workplaceviolence/index.html>.

Thank you for your interest in occupational safety and health. We hope you find this information helpful. OSHA's requirements are set by statute, standards, and regulations. Our letters of interpretation do not create new or additional requirements but rather explain these requirements and how they apply to particular circumstances. This letter constitutes OSHA's interpretation of the requirements discussed. From time to time, letters are affected when the Agency updates a standard, a legal decision impacts a standard, or changes in technology affect the interpretation. To assure that you are using the correct information and guidance, please consult OSHA's website at <http://www.osha.gov>. If you have further questions, please feel free to contact the Directorate of Enforcement Programs at (202) 693-2100.

Sincerely,

A handwritten signature in blue ink that reads "Thomas Galassi". The signature is written in a cursive, flowing style.

Thomas Galassi, Director
Directorate of Enforcement Programs